

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1465V

Filed: October 9, 2018

UNPUBLISHED

BANGONE THIRAKUL,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA); Subacromial
Bursitis; Tendonitis; Impingement
Syndrome

Steven I. Kastner, San Diego, CA, for petitioner.

Sarah Christina Duncan, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On October 6, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered injuries, including a Shoulder Injury Related to Vaccine Administration resulting from an influenza vaccination received on October 13, 2014. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On September 5, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for subacromial bursitis, tendonitis, and impingement syndrome. On October 9, 2018, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$82,500.00. Proffer at 2. In the Proffer, respondent represented that petitioner agrees with the proffered award. Based

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$82,500.00 in the form of a check payable to petitioner, Bangone Thirakul.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

BANGONE THIRAKUL,
 Petitioner,
 v.
 SECRETARY OF HEALTH AND HUMAN
 SERVICES,
 Respondent.

No. 17-1465V
 Chief Special Master Dorsey
 ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On October 6, 2017, Bangone Thirakul (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered a shoulder injury related to vaccine administration (“SIRVA”) in her left shoulder as a result of an influenza (“flu”) vaccine administered on October 13, 2014. Petition at 1. On September 4, 2018, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report concluding that a preponderance of the medical evidence establishes that petitioner’s subacromial bursitis, tendonitis, and impingement syndrome, confirmed by an MRI, were caused-in-fact by the flu vaccine she received on October 13, 2014, and indicating that this case is appropriate for compensation under the terms of the Act. ECF No. 37. The Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation on September 5, 2018. ECF No. 38.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that Bangone Thirakul should be awarded \$82,500.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to Bangone Thirakul should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹: \$82,500.00 for pain and suffering, in the form of a check payable to petitioner, Bangone Thirakul.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Bangone Thirakul:	\$82,500.00
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Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

s/ Sarah C. Duncan
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